

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RODERICK HAROLD PERSON,

Plaintiff,

v.

Case Number 08-14850-BC  
Honorable Thomas L. Ludington

CITY OF ALPENA, COUNTY OF ALPENA,  
JOHN DOE, ALPENA DEPARTMENT OF  
ROAD WORKS, ALPENA POLICE DEPARTMENT,  
CHIEF OF ALPENA POLICE DEPARTMENT,  
WILLIAM C. GOHL, OFFICER MICHAEL BROOKS,

Defendants.

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**ORDER ADOPTING IN PART AND REJECTING IN PART MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION, GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S  
MOTION FOR DISCOVERY AS MOOT, DISMISSING PLAINTIFF'S  
CONSTITUTIONAL CLAIMS WITH PREJUDICE, AND REMANDING THE CASE TO  
ALPENA COUNTY CIRCUIT COURT FOR FURTHER PROCEEDINGS**

Magistrate Judge Charles E. Binder issued a report and recommendation [Dkt. # 49] on March 9, 2010, recommending that Defendants' motion for summary judgment [Dkt. # 32] be granted in part and that Plaintiff's motion for discovery [Dkt. # 43] be denied as moot.<sup>1</sup> He further recommended that the case be dismissed in its entirety. Either party may serve and file written objections “[w]ithin fourteen days after being served with a copy” of the report and recommendations. 28 U.S.C. § 636(b)(1). The district court will make a “de novo determination of those portions of the report . . . to which objection is made.” *Id.* Where, as here, neither party objects to the report, the district court is not obligated to independently review the record. *Thomas*

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<sup>1</sup> Magistrate Judge Binder characterizes the recommendation as granting Defendants' motion for summary judgment, but he does not recommend reaching the merits of their state-law claims. Accordingly, the recommendation only grants part of the relief sought.

*v. Arn*, 474 U.S. 140, 149–52 (1985).

The Magistrate Judge's report recommends dismissing the case in its entirety. However, it suggests that Plaintiff's state law claims should be dismissed for lack of subject matter jurisdiction, rather than on their merits, because the court no longer has original jurisdiction over Plaintiff's complaint after the constitutional claims have been dismissed. The complaint was not filed in this Court originally. Rather, it was removed from Alpena County Circuit Court by the Defendants. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction [over a case that has been removed from state court], the case shall be remanded." 28 U.S.C. § 1447(c). Accordingly, Plaintiff's remaining state law claims will be remanded to Alpena County Circuit Court rather than dismissed.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [Dkt. # 49] is **ADOPTED IN PART AND REJECTED IN PART.**

It is further **ORDERED** that Defendants' motion for summary judgment [Dkt. # 32] is **GRANTED IN PART AND DENIED IN PART.**

It is further **ORDERED** that Plaintiff's motion for discovery [Dkt. # 43] is **DENIED AS MOOT.**

It is further **ORDERED** that Plaintiff's constitutional claims are **DISMISSED WITH PREJUDICE.**

It is further **ORDERED** that Plaintiff's state law claims against all Defendants are **REMANDED** to Alpena County Circuit Court for further proceedings.

It is further **ORDERED** that the case is closed.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: March 29, 2010

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 29, 2010.

s/Tracy A. Jacobs  
TRACY A. JACOBS